

REMARKS/ARGUMENTS

The present Response is an effort to overcome the rejections cited in the Office Action mailed January 8, 2008, and to place the pending claims in condition for allowance.

Claims 1-7 and 14-21 are pending in this application.

Claims 8-13 were previously cancelled.

Claim Rejections under 35 U.S.C. §103(a)

Claims 1-7 and 14-21 were rejected under 35 U.S.C. §103(a) as being unpatentable over United States Patent No. 6,347,428 to Shimko et al. in view of United States Patent No. 5,367,740 to McCray.

The Examiner cites to Shimko as teaching all of the elements of the claimed invention, except the following:

- The fluid in Shimko is dispensed via a manual pump as opposed to a motor powered pump (page 2);
- The pump 32, tube 54 (the Applicant assumes the Examiner meant tube 54, which terminates in the nozzle 30, and not tube 58, which extends to the cleaning solution tank) and nozzle 30 are positioned in the handle section 22 instead of the main section 18 (page 3);
- The dirty fluid reservoir 20 is adjacent to the main section 18 and not integral (page 3); and
- Shimko discloses a single tube connected to the housing, and not a plurality as claimed (page 3).

Further, the Examiner maintains that McCray overcomes the deficiency of Shimko in that McCray teaches a pump 50 driven by a motor 36. Regarding the remaining missing elements in Shimko, the Examiner maintains that it would have been obvious make the dirty fluid reservoir integral with the main section and to provide a plurality of tubes to the nozzle. Additionally, the Examiner maintains that it would have been obvious to re-position the pump, tube and the nozzle, as re-positioning "*would not alter the operation of the Shimko cleaner.*"

This rejection is respectfully traversed. Specifically, if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention

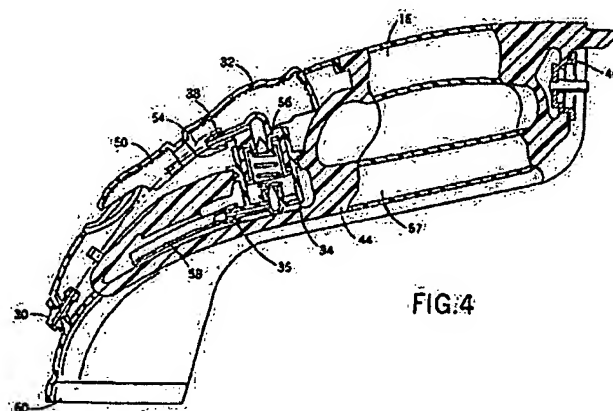
being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. M.P.E.P. 2143.01 (VI). *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

Moreover, to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. MPEP §2143.03 (citing to *In re Royka*, 180 USPQ 580 (CCPA 1974)).

It is believed that the Examiner's §103 rejections do not meet the criteria indicated above. That is, notwithstanding the Examiner's comments in the Office Action, the Applicant believes that re-positioning the pump, tube and nozzle would indeed alter the principle of operation of Shimko. Additionally, given that the Examiner has admitted the absence of all the claimed limitations in Shimko, the Examiner's §103(a) rejections do not establish a *prima facie* case for obviousness, because Shimko, whether taken alone or in combination with McCray, does not teach, let alone suggest, all of the recitations of the claimed invention.

In particular, Shimko teaches a wet/dry vacuum having a spray nozzle 30 connected to a spray tube 54, the spray nozzle and the spray tube both being positioned in a handle portion 22. The spray tube 54 is additionally connected to an outlet port 38 of a siphon 34, which further includes an inlet port 35, such that upon actuating a siphon actuator 32, cleaning fluid from a cleaning tank 16 is siphoned through the inlet port to the outlet port 38. From the outlet port 38, the cleaning fluid flows through the spray tube 54 to the nozzle 30 by gravity to be released onto a surface to be cleaned.

See Shimko in FIG. 4 and col. 4, lines 23-31, below (emphasis added):



Referring now to FIG. 4, the spray nozzle 30 is connected to a spray tube 54 which is connected to the outlet port 38. As the actuator 32 is depressed, a spring mechanism 56 is compressed, creating a vacuum or siphon. *Cleaning fluid* is siphoned from a reservoir

57 through a tube 58 up into the inlet port 35 and up to outlet port 38, and then flows by gravity through the spray tube 54 to the spray nozzle 30 onto the surface to be cleaned.

Thus, Shimko teaches a cleaning device in which dispensing of the cleaning fluid from the spray tube positioned in the handle portion, onto the surface to be cleaned, is by gravity. As best as the Applicant can determine, upon re-positioning the pump, the tube and the nozzle to the main section in Shimko, the action of dispensing the cleaning fluid by gravity through the nozzle will not be facilitated, particularly insofar as the main section 18 appears at least substantially horizontal in comparison with the handle portion 22. Thus, re-positioning the pump, tube and nozzle will change the principle of operation of Shimko's cleaning device in that the cleaning fluid will not be dispensed by gravity, thereby rendering Shimko's device unsatisfactory for its intended use.

For at least this reason, namely, that re-positioning of the nozzle, pump and tube would alter the principle of operation of the Shimko cleaner, the Examiner is legally barred from making the present obviousness rejection over Shimko. Moreover, since the present obviousness rejection over Shimko is legally barred, the Examiner has not established *prima facie* obviousness of the claimed invention (*i.e.*, the Examiner has not shown that all the claim limitations are taught or suggested by the prior art of record).

In view of the foregoing, the Applicant submits that the claimed invention is non-obvious over Shimko. Accordingly, Claims 1-7 and 14-21 are believed to patentably define over the teachings of Shimko and it is respectfully requested that the Examiner withdraw the rejection of these claims.

Conclusion

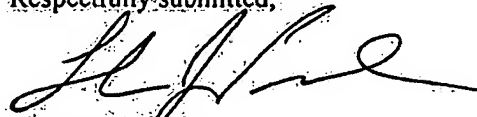
The Applicant believes that the comments above place the Application in condition for allowance. As such, the Applicant respectfully requests that the Examiner consider and allow the pending claims. The Applicant further believes that the newly-added claims patentably define over the art of record.

The Non-Final Office Action was mailed on January 8, 2008. Since June 8th fell on a Sunday, a two month extension of time fee is believed due. Please charge Deposit Account 23-2053 in the amount of \$230 for the two month extension of time. No other fee or petition is believed to be due in connection with this submission. If any such additional fee, including any

fee for the newly added claims, is in fact due, please charge Deposit Account 23-2053. Also, any required petition should be considered provisionally made.

The Examiner is invited to call the Applicant's attorney at 414- 978-5539 in the event that such communication would facilitate allowance of the present Application.

Respectfully submitted,



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